

**CARPENTER, J.**

Before the Court is Fadi Sharabati's ("Defendant" or "Mr. Sharabati") Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction, as well as his Motion for Return or Escrow of Funds Garnished Under the Vacated Default Judgment. For the reasons set forth in this Opinion, Defendant's Motion to Dismiss is GRANTED, and the dismissal is effective forty-five days after this decision. The Motion for Return or Escrow of Funds is STAYED.

## **I. FACTUAL & PROCEDURAL BACKGROUND**

Plaintiff Elizabeth White ("Plaintiff" or "Ms. White") initiated this litigation to recover cryptocurrency assets purportedly stolen from her through a fraudulent scheme.<sup>1</sup> Ms. White is a resident of New York and "conducts business through the White Company, a Delaware entity."<sup>2</sup> Defendant Mr. Sharabati is a Palestinian National who resides in Morocco.<sup>3</sup>

On December 27, 2017, Plaintiff was allegedly contacted by Defendant and asked "to enter into a cryptocurrency transaction, in which [she] would sell 484,000 Ripple to [Mr. Sharabati] in exchange for 46.5 Bitcoin using a certain online escrow platform."<sup>4</sup> Ms. White used an "agreed-upon sequence" to transfer her Ripple, but

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<sup>1</sup> Am. Compl. ¶ 1.

<sup>2</sup> *Id.* ¶ 7.

<sup>3</sup> *Id.* ¶ 8.

<sup>4</sup> *Id.* ¶ 2.

never received the 46.5 Bitcoin from Mr. Sharabati in return.<sup>5</sup> Plaintiff eventually traced the 484,000 Ripple to Defendant's account on a cryptocurrency exchange platform operated by Bittrex, a Delaware corporation that is headquartered in Seattle, Washington.<sup>6</sup>

Ms. White filed the instant lawsuit against John Doe on February 23, 2018, prior to learning the identity of the Bittrex account holder. Plaintiff subsequently amended her Complaint to name Mr. Sharabati as Defendant on April 3, 2018. Approximately one month later, on May 1, 2018, the Superior Court Prothonotary entered default judgment against Defendant for failure to appear, plead, or otherwise defend.<sup>7</sup> After the entry of default judgment, Plaintiff "moved to garnish certain crypto-currencies held by Mr. Sharabati on several internet-based electronic trading platforms, including [Bittrex] and [Poloniex]."<sup>8</sup> Bittrex subsequently turned over approximately \$455,010.79 in cryptocurrency to Plaintiff, while Poloniex gave her about \$30,000.<sup>9</sup>

Defendant filed a Motion to Vacate the Default Judgment on November 19, 2018, and the Court granted Defendant's Motion on December 17, 2018.<sup>10</sup> Mr. Sharabati subsequently filed the instant Motion to Dismiss for Lack of Personal

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* ¶¶ 5, 8. *See also* Def.'s Mot. to Dismiss ¶ 3.

<sup>7</sup> *See* Pl.'s Letter to Prothonotary (May 8, 2018), D.I. 12-14.

<sup>8</sup> Def.'s Mot. for Return of Funds ¶ 2.

<sup>9</sup> *Id.* ¶ 3.

<sup>10</sup> Court's Order, D.I. 47.

Jurisdiction and Motion for Return or Escrow of Funds Garnished Under the Vacated Default Judgment. This is the Court's decision on the pending Motions.

## **II. DISCUSSION**

### **A. Motion to Dismiss for Lack of Personal Jurisdiction**

On a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden of showing a basis for the trial court's exercise of jurisdiction over a nonresident defendant.<sup>11</sup> In Delaware, "courts will apply a two-prong analysis to the issue of personal jurisdiction over a nonresident."<sup>12</sup> First, the court must determine whether Delaware's long arm statute, 10 Del. C. § 3104(c), is applicable.<sup>13</sup> It then must consider whether subjecting the nonresident to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment.<sup>14</sup> The Due Process Clause requires the defendant to have minimum contacts with the forum state, and "it must be 'fair and reasonable' for the court to exercise jurisdiction over the nonresident party."<sup>15</sup>

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<sup>11</sup> *Herman v. BRP, Inc.*, 2015 WL 1733805, at \*3 (Del. Super. Ct. Apr. 13, 2015) (citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 (Del. 2005)).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Delaware's long arm statute states that "a court may exercise personal jurisdiction over any nonresident ... who in person or through an agent:

(1) Transacts any business or performs any character of work or service in the State..."<sup>16</sup>

For the Court to exercise jurisdiction under 10 Del. C. § 3104(c)(1), "some act must actually occur in Delaware."<sup>17</sup>

Mr. Sharabati argues that there are no Delaware contacts to support this Court's jurisdiction over him.<sup>18</sup> According to Defendant, "the mere fact that Bittrex is a Delaware corporation does not provide this Court with jurisdiction over Sharabati or the conduct alleged in the Amended Complaint."<sup>19</sup> Mr. Sharabati also claims that "nothing about the transaction occurred in Delaware."<sup>20</sup>

In response, Plaintiff first contends that "Defendant waived his personal jurisdiction defense by moving this Court to compel Ms. White to liquidate and return or escrow cryptocurrency."<sup>21</sup> Even if Mr. Sharabati did not already consent to this Court's jurisdiction in his Motion for Return or Escrow of Funds, Ms. White argues that Defendant transacted business in the state "by laundering the stolen

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<sup>16</sup> 10 Del. C. § 3104(c).

<sup>17</sup> *Mobile Diagnostic Grp. Holdings, LLC v. Suer*, 972 A.2d 799, 804 (Del. Ch. 2009) (quoting *Kelly v. McKesson HBOC, Inc.*, 2002 WL 88939, at \*17 (Del. Super. Ct. 2002)).

<sup>18</sup> Def.'s Mot. to Dismiss ¶ 1.

<sup>19</sup> *Id.* ¶ 3.

<sup>20</sup> *Id.* ¶ 2.

<sup>21</sup> Pl.'s Opp'n Mot. to Dismiss ¶ 1.

cryptocurrency through at least one Delaware corporation...”<sup>22</sup> Therefore, according to Plaintiff, this Court’s jurisdiction over Defendant is proper.<sup>23</sup>

Defendant’s use of a cryptocurrency trading platform incorporated in Delaware is not enough to bring him within the reach of this Court’s jurisdiction. The record indicates that Plaintiff was in New York City and Defendant was in Morocco when the disputed transaction occurred. Although incorporated in Delaware, the cryptocurrency trading platform, Bittrex, is headquartered in Seattle, Washington. Except for Bittrex’s incorporation under Delaware law, this litigation has no other connection to the state, and there is no evidence that Mr. Sharabati has affirmatively established additional contacts with Delaware beyond his mere use of the trading platform. Plaintiff is essentially asking this Court to exercise personal jurisdiction over a nonresident who has done nothing more than “communicate electronically”<sup>24</sup> with a Delaware corporation that conducts its business outside of Delaware. As the United States District Court of Delaware has stated:

Absent evidence of continuous and systematic contacts with Delaware..., transacting business with a Delaware corporation outside of Delaware satisfies neither Delaware’s long arm statute nor due process, as there is no support for the proposition that activity directed to a Delaware corporation that conducts its business elsewhere

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<sup>22</sup> *Id.*

<sup>23</sup> *See id.* ¶¶ 5-8.

<sup>24</sup> *Roadsafe Traffic Sys., Inc. v. Ameriseal Northeast Florida, Inc.*, 705 F. Supp. 2d 330, 333 (D. Del. 2010).

is “constitutionally cognizable contact with the State” of Delaware.<sup>25</sup>

Furthermore, even if the Court accepted Plaintiff’s argument that the Delaware long-arm statute requirements are satisfied, it believes that exercising jurisdiction over Defendant would violate the Due Process Clause. Under Plaintiff’s logic, any nonresident who uses the website of a Delaware corporation, even once, would be subject to this Court’s jurisdiction. Defendant did not purposefully avail himself of the privilege of conducting activities within Delaware and it is not reasonable for him to anticipate being hauled into this Court. Therefore, Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction is granted.

#### **B. Motion for Return or Escrow of Funds**

Defendant argues that the garnished cryptocurrency funds should be returned to him if the Motion to Dismiss is granted, or placed in escrow with the Court if the Motion to Dismiss is denied.<sup>26</sup> Ms. White contends that she should not be compelled to return the funds because “all parties agree [they] are hers.”<sup>27</sup> Furthermore, Plaintiff claims that “[b]eing forced to reimburse funds to the alleged wrongdoer who will flee to other jurisdictions may prevent [her] from being made whole.”<sup>28</sup>

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<sup>25</sup> *Id.* at 333-34.

<sup>26</sup> Def.’s Mot. for Return of Funds ¶ 8.

<sup>27</sup> Pl.’s Opp’n Mot. for Return of Funds ¶ 7.

<sup>28</sup> *Id.* ¶ 8.

The Court is very concerned that forcing Ms. White to return the garnished funds to Mr. Sharabati will result in her never recovering for the alleged fraud committed by Defendant. The facts presently known by the Court reflect a systematic scheme by the Defendant to defraud those who decide to participate in the risky business of cryptocurrency. While the Court also finds Plaintiff's conduct to be reckless and naïve, it is not willing to perpetuate the fraud by immediately ordering the funds returned.

Therefore, the Court will delay the effective date of its dismissal for forty-five days to allow Plaintiff time to file a subsequent action in a proper jurisdiction and take the steps necessary to protect the garnished cryptocurrency for litigation. Ultimately, the issue of whether the funds should be held in escrow or returned to Defendant until this dispute is resolved on the merits is one to be addressed by the new forum court. If no new litigation is filed within the forty-five days, the Court orders the garnished funds to be returned to Defendant, as they were taken through the use of this Court's process that did not have jurisdiction over him.<sup>29</sup>

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<sup>29</sup> See *Branson v. Exide Elec. Corp.*, 625 A.2d 267, 269 (Del. 1993).



### III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED**, and the dismissal is effective forty-five days after the date of this Opinion. Defendant's Motion for Return or Escrow of Funds is **STAYED**, pending the filing of a new lawsuit.

**IT IS SO ORDERED.**



Handwritten signature of Judge William C. Carpenter, Jr. in blue ink, written over a horizontal line.

Judge William C. Carpenter, Jr.